MEMORANDUM

To: Coalition to Preserve Rehabilitation Members

From: Peter Thomas and Michael Barnett, CPR Coordinators

Date: February 2, 2024

Re: **Coalition to Preserve Rehabilitation Year in Review 2023**

EXECUTIVE SUMMARY

Following is an update on the activities of the Coalition to Preserve Rehabilitation (CPR) in 2023. As we enter 2024, we would like to take this opportunity to summarize the advocacy efforts conducted by CPR and its member organizations over the past twelve months.

CPR's strength as a representative coalition of national consumer, clinician, and membership organizations that advocate for policies to ensure and enhance access to rehabilitative care in all settings is evident through its active and productive portfolio of advocacy efforts. This past year was no exception, as CPR engaged with policymakers and federal agencies to advance its targeted agenda.

This memorandum summarizes CPR's work across a number of key priorities in 2023. Further information on CPR's activities, including our advocacy archives, can be found on the CPR website at www.preserverehab.org. We encourage CPR members to review this memo and consider any suggestions for continued or new policy priorities for the Coalition's efforts in 2024. We will discuss our work this year and our plans for next year at the upcoming all-member meeting, scheduled for **Tuesday, February 6th, from 12-2pm ET**. **The annual meeting will be held in-person at the Powers Law offices (1501 M Street NW, Washington, DC) with a hybrid virtual option available via Zoom**. The meeting is open to all CPR members.

If you have any questions regarding the Annual Meeting, please contact Sarah Melone at Sarah.Melone@PowersLaw.com.

2023 ADVOCACY HIGHLIGHTS

In 2023, CPR engaged with Congress, the Biden Administration, and external stakeholders on a variety of key priority issues for the Coalition. These efforts addressed CPR's stated priorities

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(which can be found here: https://preserverehab.files.wordpress.com/2023/02/cpr-2023-policy-priorities-final.pdf) as well as additional advocacy efforts to advance our shared goal of increased access to rehabilitation care for people with disabilities, injuries, illnesses, and chronic conditions. Key advocacy efforts focused on both regulatory and legislative goals, which are summarized below. CPR also continued to support our full slate of 2023 policy priorities whenever possible, including through regulatory comments, support for legislative initiatives, and engagement with the rehabilitation community and policymakers in both Congress and the Administration. Our advocacy efforts are summarized below.

1. Prior Authorization Reform

In March of 2023, CPR submitted comments to CMS in response to the *Advancing Interoperability and Improving Prior Authorization Processes* proposed rule. CPR's comments strongly agreed with CMS's statements in support of health equity measures to increase access to health information for individuals with disabilities and individuals with limited or low health literacy. CPR further applauded CMS for addressing key issues relating to the overuse and misuse of prior authorization, including requiring specific reasons for denial, shortening timeframes for decisions, and requiring transparency from payers such as publishing data with respect to denial. CPR will continue to advocate for reforms to prior authorization and other utilization management techniques in 2024 to ensure patients have access to the care they need.

2. Inpatient Rehabilitation Facility Prospective Payment System

In June of 2023, CPR submitted comments on the 2024 Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS) proposed rule. CPR responded to several notable provisions, including proposed adjustments to the Case Mix Groups (CMGs) that form the basis for the IRF PPS and ultimately create financial incentives that may impact care to certain types of Medicare beneficiaries. We addressed two additional issues as well, one in response to the proposed rule's solicitation of other policies, namely, ensuring that future quality measures are directed, first and foremost, at improving patient care, and expressed our continued concern with the implementation of the IRF Review Choice Demonstration (RCD) project.

CPR also continued to monitor policies that could impact IRF and other post-acute care settings. We were pleased to find in Medicare Payment Advisory Commission's (MedPAC's) June 2023 report that the Commission is moving away from a recommendation to Congress to implement a unified post-acute care payment system, marking a huge win following years of advocacy to encourage the Commission not to move forward with the controversial unified PAC payment system. Instead, however, the Commission recommended to Congress that it should consider smaller-scale, site-neutral policies instead, such as alternative payment options for IRFs and skilled nursing facilities (SNFs). This was part of MedPAC's discussion during its October 2023 public meeting, and we anticipate that discussions around this and the potential impact on rehabilitation patients and providers, particularly those with complex needs, will be a major focus of our work in the coming year.

3. Review Choice Demonstration for IRFs

In June of 2023, the CPR Steering Committee submitted comments to CMS expressing concerns and offering recommendations regarding the IRF Review Choice Demonstration (RCD), which was implemented in Alabama on August 21, 2023, and expected to expand to Pennsylvania, Texas, and California and eventually other states in several Medicare Administrative Contractor (MAC) jurisdictions.

Under the IRF RCD, facilities are subject to 100% pre-claim or post-payment review for their Medicare claims until they meet the "target affirmation rate." At that point, they may forgo 100% pre- or post-payment review but would still be subject to selective review or so-called "spot checks" on 5% of their claims. Although the demonstration began with most IRFs located in the State of Alabama, it will be expanded to several other states, eventually encompassing 17 states, three U.S. territories, and the District of Columbia. When fully implemented, CMS estimates that the IRF RCD will apply to 526 freestanding rehabilitation hospitals and hospital-based inpatient rehabilitation units across the United States. Considering the large numbers of IRFs that will be impacted by this demonstration, it is critically important that CMS ensure that the IRF RCD does not adversely impact Medicare beneficiaries.

Specifically, our comment letter in June illustrated our concerns that the demonstration would:

- Undermine the medical judgment of trained rehabilitation physicians
- Disrupt the course of IRF treatment due to pre-claim denials
- Place a significant administrative burden on inpatient rehabilitation hospitals, and
- Construct barriers to medically necessary rehabilitation care both immediately and over time by creating a "gatekeeper" effect on IRF admissions.

To date, the affirmation rates in Alabama remain very high, and we are cautiously optimistic that this trend will continue in the right direction as the demonstration is implemented in additional states in 2024. CPR will continue to monitor the IRF RCD in 2024 and advocate when necessary to ensure access to IRF care is not undermined or limited moving forward.

4. IRF Three-Hour Rule Legislation

In October of 2023, U.S. Representatives Glenn 'GT' Thompson (R-PA) and Joe Courtney (D-CT) reintroduced H.R. 6110, the *Access to Inpatient Rehabilitation Therapy Act of 2023*, which is a bipartisan bill that seeks to restore physician judgment when determining which services are counted toward the so-called inpatient rehabilitation facility (IRF) "three-hour rule."

As background, the Centers for Medicare and Medicaid Services (CMS) uses an intensity of therapy requirement to determine, in part, which Medicare beneficiaries qualify for treatment in an IRF. The so-called "three-hour rule" requires the patient to participate in, and benefit from, at least three hours of rehabilitation therapy per day, five days per week (or 15 hours per week if documented appropriately). Prior to 2010, CMS regulations for IRFs explicitly recognized ***physical therapy, occupational therapy, speech therapy,*** and/or ***orthotics and prosthetics*** as

countable toward the three-hour rule, but also allowed the physician and rehabilitation team to prescribe the appropriate mix of "other therapeutic modalities" in addition to the skilled services listed in the regulation.

In 2010, CMS revised the IRF regulations and limited the three-hour rule to only the four previously listed skilled modalities, removing the physician's discretion to count additional therapeutic services toward satisfaction of the rule. Other skilled therapies including recreational therapy, respiratory therapy, and other skilled services are no longer counted. Although IRFs are permitted to provide these services, the fact that they cannot be counted toward the rule has limited their availability in many rehabilitation hospitals.

During the COVID-19 public health emergency (PHE), the three-hour rule was waived in its entirety. Despite this broad flexibility, nationwide IRF data demonstrated that admissions did not increase, and the average amount of therapy provided to patients remained steady. The blanket waiver of the rule did not result in negative impacts on care, but instead allowed IRF patients to receive a broader, more appropriate mix of therapies to treat their conditions. Nonetheless, the three-hour rule was reinstated when the PHE ended in May 2023.

The *Access to Inpatient Rehabilitation Act of 2023* would still require an IRF patient to meet the current three-hour rule upon admission, but would add flexibility for the physician and the rehabilitation team to determine the appropriate mix of skilled services to best suit an individual patient throughout the IRF stay, providing a more patient-centered treatment plan. This change in the law would help facilitate access to the appropriate mix of services in the IRF setting and would significantly benefit the patient population IRFs serve, including people with brain injuries, spinal cord injuries, those who have sustained strokes and amputations, individuals living with neurological disorders, and a wide range of other conditions.

CPR will continue to engage with Congress and other stakeholders to build support for H.R. 6110 in 2024.

5. ACA Advocacy

In November of 2023, CPR responded to HHS' proposed rule to revamp the Department's Section 504 regulations. This landmark proposed rule sought to clarify existing health care requirements under Section 504 of the Rehabilitation Act of 1973 prohibiting recipients of federal financial assistance from discriminating on the basis of disability in their programs and activities. Our comments focused on the HHS proposals that would improve health equity by addressing equitable access to a number of benefits and services for people with disabilities, including: the prohibition of discrimination in medical decisions; the prohibition of the discriminatory use of value assessments; clarification regarding accessibility standards for web, mobile application and kiosk accessibility; and the establishment of enforceable standards for accessible medical diagnostic equipment.

CPR will continue to monitor policy changes related to the ACA's nondiscrimination provisions and the Essential Health Benefits (EHB) package and continue to advocate for expanded accessibility of all technology used in a health care setting in 2024.

6. Medicare Advantage Regulations

CPR continued its advocacy in support of reforms to the prior authorization process used by Medicare Advantage plans, which in many cases delays and denies medically necessary care for individuals in need of rehabilitation. In February, CPR submitted comments to CMS in response to the CY 2024 Medicare Advantage proposed rule. This proposed rule included a statement that prior authorization should only be used to confirm the presence of diagnoses or other medical criteria and to ensure that the furnishing of a service or benefit is medically necessary or, for supplemental benefits, clinically appropriate. CPR strongly agreed with CMS's proposal that prior authorization should not be used to delay or deprive care to beneficiaries for which they otherwise qualify.

Medicare Advantage policy will continue to be a top priority in 2024. The proposed 2025 MA/Part D rule, released in mid-December 2023, builds on the prior authorization reforms that were finalized in the 2024 final rule, and includes provisions related to other utilization management techniques, including the use of proprietary guidelines. CPR is collaborating with the HAB Coalition in drafting detailed comments in support of these reforms, and we expect to engage with the agency and key champions on Capitol Hill to ensure these policies are finalized and implemented to protect patient access to care.

7. Therapy Caps

CPR and many of our members were closely involved in the repeal of Medicare's therapy caps in 2018, yet many private plans still use caps to deny beneficiaries access to the full slate of rehabilitation care they need. CPR is reviewing options to work with NIDILRR and other stakeholders in encouraging research applications in this area in 2024, including through targeted funding announcements, research roundtables, and potential advocacy for direct appropriations.

8. New Coalition Members

CPR added one new member in 2023. Our new member organization includes:

- **Chanda Center for Health** - https://chandacenter.org/

These additions bring the total number of active CPR members to 58 organizations. We look forward to continuing to expand in 2024 and to furthering our goal of increasing access to rehabilitative care for all people with disabilities, injuries, illnesses, and chronic conditions. We invite all CPR members to join us, in-person or virtually, for our 2024 Annual Meeting where we will discuss our 2023 accomplishments and our policy priorities for the coming year.

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The 2024 CPR Annual Meeting will be held on Tuesday, February 6th, from 12:00-2:00pm EST. All current CPR members should have received a calendar invite with the dial-in information. If you have any questions regarding the meeting, please contact Sarah Melone at Sarah.Melone@PowersLaw.com.